IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUMMONS FOR JUDGMENT NO. 613 OF 2005

IN

SUMMARY SUIT NO. 3109 OF 2004

M/s. Metal Export .....**Plffs.**
vs.
M/s. Cool Aid Sand Ors. .....**Defnds.**

K.S. Tripathi for the plaintiffs.

Prakash Shah for the defendants.

CORAM: S.U. KAMDAR, J.

DATE : 27th February, 2006.

P.C. :.

1. The present suit is filed for the goods sold and delivered for an invoice dated 15.4.2002 for Rs.97,230/- and also interest at the rate of 24% p.a. on the amount of Rs.58,815.92/- totalling to Rs.1,56,045.92/-.

2. In reply to the present summons for Judgment the defence has been raised that inrespect of earlier delivery of goods they were defective goods and the parties agreed to issue a credit note for the same. It has been pointed out by learned counsel for the plaintiff that inrespect of the said rejected goods in earlier invoice the plaintiff has already given credit of amount of Rs.25,000/-. He has drawn my attention to Exhibit-B1 which indicates the credit given of Rs.25,000/- against the Bill No. 545 and 26. In the light of the aforesaid fact that the credit is already been given for defective goods, there is no merits in the case.

3. However with a view to grant an opportunity I grant unconditional leave to defend to the defendants with a condition to deposit a sum of Rs.1,50,000/- within a period of four weeks failing which the plaintiff will be entitled to the decree. The amount so deposited will be invested by the Prothonotary and Senior master in fixed deposits of any nationalised bank initially for a period of

three years and renew the same from time to time till further orders.

4. If the amount is paid as aforestated, then suit is transferred to the list of Commercial Causes. Written statement or points of defence to be filed four weeks thereafter. Affidavits, list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on board of the learned Judge taking Commercial Causes.

. Summons for Judgment disposed off accordingly.

sd/-

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